

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
W. R. GRACE & CO., <i>et al.</i>)	Case No. 01--01139 (JKF)
)	(Jointly Administered)
Debtors.)	
)	

**CASE MANAGEMENT ORDER FOR
CLASS 7A ASBESTOS PD CLAIMS**

This Case Management Order provides procedures for the resolution of all Class 7A Asbestos PD Claims other than Class 7A Asbestos PD Claims that have been Allowed as of the Effective Date pursuant to PD Settlement Agreements.¹

I. The procedures with respect to Class 7A Asbestos PD Claims filed prior to the March 2003 Bar Date shall be as follows:

- A. ~~Unresolved Asbestos PD Claims as of the Effective Date~~ **Bar Date Claims, other than Asbestos PD Claims which either (i) have been disallowed and/or expunged, and for which the Holders of such Asbestos PD Claims have filed appeals, which appeals are pending as of the Effective Date; or (ii) class certification has been denied and an appeal from such denial of class certification is pending as of the Effective Date,** will be adjudicated in accordance with the Amended Order Setting Deadlines Regarding Objections to **Class 7A** Asbestos Property Damages **("PD")** Claims, entered by the Bankruptcy Court on _____, 2009 (Dkt. No. ____) (**"Amended Order"**) and attached hereto as Exhibit A.
- B. With respect to any and all Class 7A Asbestos PD Claims which were filed as of the March 2003 Bar Date and **which either (i) have been disallowed and/or expunged by the Bankruptcy Court and for which the claimants** **Holders of such Asbestos PD Claims** have filed appeals, which appeals are **pending as of the**

¹ Capitalized terms used in this Case Management Order and not otherwise defined shall have the meanings assigned to them in the First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code of W. R. Grace & Co., et al., the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants' Representative, and the Official Committee of Equity Security Holders Dated as of February ___, 2009-**27, 2009 (the "Plan").**

Effective Date; or (ii) as to which class certification has been denied and an appeal from such denial of class certification is pending as of the Effective Date:

1. ~~2.~~ The appeals shall proceed to completion.
2. ~~3.~~ The Anderson Memorial class claims (Nos. 09911 and 09914) shall remain inactive unless and until there is a final, appealable order with respect to the Anderson Memorial individual claim (No. 011008).
3. ~~4.~~ Claims for which appeals are successful, resulting in reversal of the Bankruptcy Court order(s) disallowing and expunging the claims, or denying class certification, shall be subject to the procedures set forth in Section II.C through II.E below remanded to the Bankruptcy Court for proceeding[s] consistent with this PD CMO. For the avoidance of doubt, Section II of this PD CMO does not apply to such proceedings, and/or any other proceedings ordered by the court(s) of appeal.

II. The procedures with respect to Class 7A Asbestos PD Claims ~~filed after the Effective Date, other than (i) Asbestos PD Claims that have been allowed pursuant to a PD Settlement Agreement; and (ii) Unresolved Asbestos PD Bar Date Claims,~~ shall be as follows:

- A. **Proof of Claim:** In order to assert a claim against the Asbestos PD Trust for a Class 7A Asbestos PD Claim, a Class 7A Claimant must file a Proof of Claim (the "POC") with the Asbestos PD Trust.
1. A claimant will file a claim with the Asbestos PD Trust on a proof of claim form that requests the same information requested on the court-approved Asbestos PD Proof of Claim form used in connection with the March 2003 Bar Date and also requests The POC shall provide the following information: to the best of the Class 7A Claimant's knowledge, information or belief:
 - (A) Class 7A Claimant's name, the last four digits of the claimant's social security number or FEIN, mailing address, and attorney's name, law firm name, mailing address and telephone number.
 - (B) Property address.
 - (C) (A) Did Whether the claimant own Class 7A Claimant owned the property on the March 2003 Bar Date? If and, if not, who owned the property on the March 2003 Bar Date?

- (B) ~~Provide an estimate of the total square footage of Grace asbestos-containing product installed in the building.~~
- (D) Whether the Class 7A Claimant or someone else on his, her, or its behalf completed any interior repair or renovations on the property that disturbed, dislodged or affected any asbestos-containing product(s) manufactured or distributed by any of the Debtors (hereafter "Asbestos-Containing Products") in the property. If yes, specify the dates and description of such repair or renovations.
- (E) Whether any other interior repair or renovations were completed on the property during any other period of time that disturbed, dislodged or affected any Asbestos-Containing Product(s) in the property. If yes, specify the dates and descriptions of such repair or renovations.
- (F) When the Class 7A Claimant or someone on his, her, or its behalf installed Asbestos-Containing Product(s) in the property.
- (G) If the Class 7A Claimant or someone on his, her, or its behalf did not install Asbestos-Containing Product(s) in the property, when such product(s) was/were installed.
- (H) Copies of all documentation relating to the purchase and/or installation of the Asbestos-Containing Product(s) in the property. If the documents are too voluminous to attach, attach a summary of the documents indicating the name of each document, date of each document, a brief description of the document, the location of the document, and who has possession of the document. If a summary of documents is provided rather than the documents themselves, the Class 7A Claimant is required to consent to the production and release of those documents to Grace upon Grace's further request.
- (I) When the Class 7A Claimant first learned of the presence of Asbestos-Containing Product(s) in the property for which the Class 7A Claimant is making this claim. Provide copies of all documents relating or referring to the presence of such asbestos or such Asbestos-Containing Product(s). If the documents are too voluminous to attach, attach a summary of the documents indicating the name of each document, date of each document, a brief description of the document, the location of the document, and who has possession of the document. If a summary of documents is provided rather than the documents themselves, the Class 7A Claimant is required

to consent to the production and release of those documents to Grace upon Grace's further request.

- (J) When the Class 7A Claimant first learned that the Asbestos-Containing Product for which the claim is being made contained asbestos.
- (K) Whether the Class 7A Claimant or someone else on its behalf made any effort to remove, contain and/or abate the Asbestos-Containing Product(s) in the property for which the Class 7A Claimant is making this claim. If yes, provide copies of all documents relating or referring to such efforts. If the documents are too voluminous to attach, attach a summary of the documents indicating the name of each document, date of each document, a brief description of the document, the location of the document, and who has possession of the document. If a summary of documents is provided rather than the documents themselves, the Class 7A Claimant is required to consent to the production and release of those documents to Grace upon Grace's further request.
- (L) If the Class 7A Claimant or someone on his, her, or its behalf has not made any effort to remove, contain and/or abate the Asbestos-Containing Product(s) in the property for which the Class 7A Claimant is making a claim, whether anyone else made such an effort and, if so, when.
- (M) Whether any individual asbestos-related property damage lawsuit or claim has been filed against Grace relating to the property for which the Class 7A Claimant is making the claim.
- (N) Whether any individual asbestos-related property damage lawsuit or claim has been filed against any other party relating to the property for which the Class 7A Claimant is making this claim?

 - (1) If an asbestos-related property damage lawsuit has been filed relating to the property for which the Class 7A Claimant is making the claim, provide the following information about each such lawsuit or attach a copy of the face page of each complaint filed: the caption; the court where the lawsuit was originally filed; the docket number; and the date filed.
 - (2) If an asbestos-related property damage claim has been filed relating to the property for which the Class 7A Claimant is making the claim, provide the following

information about each such claim or attach a copy of the face page of each claim filed; the description of the claim; the date submitted; and the name of entity to whom the claim was submitted.

(O) ~~(C)~~ When did the claimant Class 7A Claimant first learned of W. R. Grace's bankruptcy cases?

(P) ~~(D)~~ Identify A list of all newspapers and magazines to which the claimant Class 7A Claimant has subscribed.

(E) ~~Has the claimant ever been in contact with an attorney regarding W. R. Grace asbestos claims? If so, when?~~

(Q) ~~(F)~~ What is the The dollar amount of the claimant Class 7A Claimant's claim.

2. The proof of claim POC forms shall be maintained by a claims processing agent appointed by the Trust and reasonably satisfactory to Grace, and shall be promptly provided to Reorganized Grace.

3. Filing a POC shall toll any applicable statutes of limitations. Such tolling shall end at the conclusion of the first business day following the 20th day after entry on the Court's docket of the order permitting the holder of the Asbestos PD Claim identified in the POC to prosecute such claim pursuant to Section II.C of this PD CMO.

4. 3. Class action claims shall not be permitted. For the avoidance of doubt, the foregoing prohibition against the filing of class action claims shall not (i) be asserted by Grace as a basis for dismissal of any appeals by Anderson Memorial Hospital of the denial of class certification, (ii) be construed to require the dismissal of, or require any particular ruling with respect to class certification in, any subsequent proceedings on remand, if any, from the pending appeals, and (iii) be construed in a manner which conflicts with any mandates issued by the Third Circuit Court of Appeals in the pending appeals.

B. Discharge and Authority to Proceed in Litigation:

1. Within ~~60~~45 days of receipt of a proof of claim, Reorganized the POC from the Asbestos PD Trust, Grace will request any additional information it believes is necessary to evaluate (a) ~~whether the claim has been discharged because it is a claim that should have been filed by the March 2003 Bar Date and/or~~ (b) if the proof of claim was filed by an attorney, not an individual claimant, whether the attorney had authority to file the claim whether to file an Asbestos PD Claim Discharge Motion as set forth herein.

2. Within ~~60~~**45** days of receiving such request(s) from Reorganized Grace, ~~the claimants~~**a Class 7A Claimant** shall provide to Reorganized Grace the requested information, subject to all applicable objections, privileges or exemptions from discovery.
3. ~~Within 120~~**Not later than 45** days of ~~or~~**after** receipt of such information from the claimant, Reorganized Grace **Class 7A Claimant, Grace, on behalf of the Asbestos PD Trust,** shall file in the Bankruptcy Court any motion to expunge the claim based on discharge of the claim and/or lack of authority. ~~The motion shall be heard and decided under the appropriate governing Bankruptcy Court rules and procedures.~~**a motion (an "Asbestos PD Claim Discharge Motion") seeking to enjoin or otherwise terminate the prosecution of such claim on the ground that the claim is barred by the discharge granted to Grace pursuant to confirmation of the Plan and the March 2003 Bar Date.**

C. Pre-Trial Litigation: Any claims that have not been discharged and for which authority has been determined shall be referred to the Bankruptcy Court for pre-trial proceedings under the appropriate Federal Rules of Civil Procedure.

1. ~~Within 30 days of the Bankruptcy Court's determination that the claim has not been discharged and has been authorized (if authority was litigated), the claimant shall file a complaint in the District Court and shall attach the proof of claim as an exhibit.~~
2. ~~Within 30 days, Reorganized Grace shall file a responsive pleading.~~
3. ~~The Bankruptcy Court shall then adjudicate a summary judgment phase under the applicable Federal Rules. Reorganized Grace and the claimant may seek discovery under the Federal Rules and file summary judgment motions. The Bankruptcy Court shall have full ability to employ Rules 16 and 42 and Daubert proceedings.~~
4. At the conclusion of the pre-trial phase, absent agreement of the parties, the Bankruptcy Court shall certify that the pre-trial proceedings have been concluded. **Should Grace choose to file an Asbestos PD Claim Discharge Motion, that Motion shall be heard and decided under the appropriate governing federal laws, rules and Bankruptcy Rules, as applicable. In its sole discretion, Grace shall be authorized to prosecute an Asbestos PD Claim Discharge Motion on behalf of the Asbestos PD Trust.**

D. Settlement and ADR:

1. ~~Nothing in this Case Management Order shall prevent the parties from engaging in settlement discussions at any time.~~

2. ~~Following the conclusion of the pre-trial proceedings, there shall be a specific time period for settlement and alternative dispute resolution. Absent other agreement between Reorganized Grace and the claimant, this period shall be six months.~~
3. ~~Reorganized Grace and the claimant may request information that would assist in resolving the claim through settlement or ADR.~~

~~E. Trial:~~

5. Neither Grace nor the Asbestos PD Trust shall file a declaratory judgment action against a Class 7A Claimant who has filed a POC except as a counter-claim.
6. In the event that the Bankruptcy Court rules that an Asbestos PD Claim is barred by the discharge pursuant to the Plan or the March 2003 Bar Date, (a) the Asbestos PD Trust shall have no liability to pay that barred Asbestos PD Claim and (b) neither (i) Grace, (ii) any of the Sealed Air Indemnified Parties, (iii) any of the Fresenius Indemnified Parties, nor (iv) any other Asbestos Protected Party, solely in its capacity as an Asbestos Protected Party and in no other such capacity, shall have any liability on account of that barred Asbestos PD Claim; provided, however, that Grace shall, consistent with the Case Management Order for Class 7A Asbestos PD Claims and the Asbestos PD Trust Agreement, be responsible to the Asbestos PD Trust for all reasonable costs, including, but not limited to, attorneys' fees, which may be incurred by the Asbestos PD Trust with respect to that barred Asbestos PD Claim.

C. Litigation of a Class 7A Asbestos PD Claim following resolution of a Class 7A Asbestos PD Claim Discharge Motion:

1. For claims that are not resolved through settlement or ADR, the reference to the Bankruptcy Court is withdrawn and the claims shall proceed to trial in the District Court. In the event: (i) Grace fails to timely file on behalf of the Asbestos PD Trust an Asbestos PD Claim Discharge Motion; or (ii) a final order is entered with respect to an Asbestos PD Claim Discharge Motion finding that the Class 7A Asbestos PD Claim is not barred by the discharge pursuant to the Plan or the March 2003 Bar Date or otherwise permits the claim to go forward, the Class 7A Claimant holding such Class 7A Asbestos PD Claim shall be permitted to prosecute such claim against the Asbestos PD Trust in, but only in, the United States District Court for the District of Delaware or such other United States District Court that has jurisdiction over the action commenced with respect to such claim.

2. ~~All appropriate~~ For the avoidance of doubt, in any litigation commenced pursuant to this Section II.C, all applicable Federal statutes, Federal Rules of Civil Procedure, Federal Rules of Evidence and applicable Federal local court rules shall apply.
3. To the extent set forth in the Asbestos PD Trust Agreement and the Plan, Grace shall be authorized to represent the Asbestos PD Trust in such litigation and shall have sole discretion in the prosecution of such defense.
4. The Asbestos PD Trust shall pay in Cash the Allowed Amount of such Asbestos PD Claim.

ORDERED this ____ day of _____, 2009

Honorable Judith K. Fitzgerald
United States Bankruptcy Judge

Document comparison done by Workshare DeltaView on Friday, February 27, 2009
2:24:29 PM

Input:

Document 1	interwovenSite://NYDMS/LEGAL/14306068/1
Document 2	interwovenSite://NYDMS/LEGAL/14253758/10
Rendering set	Basic K&E

Legend:
Insertion

~~Deletion~~

~~Moved from~~

Moved to

Style change

Format change

~~Moved deletion~~

Inserted cell

Deleted cell

Moved cell

Split/Merged cell

Padding cell

Redline Summary:

No.	Change	Text
1-2	Change	"Case No. 01-01139 (JKF)" changed to "Case No. 01-01139 (JKF)"
3	Change	"PD Claims that have been...Settlement Agreements. ¹ " changed to "PD Claims that have been...Settlement Agreements. ¹ "
4-5	Change	"Security Holders Dated as of February __, 2009." changed to "Security Holders Dated as...27, 2009 (the "Plan")."
6-7	Change	"A. Unresolved Asbestos PD...in accordance" changed to "A. Unresolved Asbestos PD...in accordance"
8	Change	"Deadlines Regarding...Property Damages" changed to "Deadlines Regarding...Property Damages"
9	Change	"Asbestos Property Damages...by the Bankruptcy" changed to "Asbestos Property Damages...by the Bankruptcy"

10	Change	"of the March 2003 Bar...have been disallowed and" changed to "of the March 2003 Bar...have been disallowed and"
11	Change	"have been disallowed and...by the Bankruptcy Court" changed to "have been disallowed...by the Bankruptcy Court"
12-13	Change	"Bankruptcy Court and for...appeals, which appeals" changed to "Bankruptcy Court and for...appeals, which appeals"
14	Change	"filed appeals, which...of the Effective Date:" changed to "filed appeals, which...of the Effective Date:"
15	Change	"The appeals shall proceed to completion." changed to "2. The appeals shall proceed to completion."
16	Change	"The Anderson Memorial class claims" changed to "3. The Anderson Memorial class claims"
17	Change	"Claims for which appeals are successful," changed to "4. Claims for which appeals are successful,"
18	Change	"disallowing and expunging the claims, shall be" changed to "disallowing and expunging...certification, shall be"
19-20	Change	"shall be subject to the...II.C through II.E below." changed to "shall be remanded to the...the court(s) of appeal."
21-22	Change	"respect to Class 7A...shall be as follows:" changed to "respect to Class 7A...shall be as follows:"
23	Insertion	A. Proof of Claim: In...the Asbestos PD Trust.
24-25	Change	"1. A claimant will file a...following information" changed to "1. The POC shall provide...following information"
26-27	Change	"the following information:" changed to "the following information...information or belief:"
28-29	Insertion	(A) Class 7A Claimant's...and telephone number.
30-31	Insertion	(B) Property address.

32-33	Change	"the" changed to "(A) DidWhether the"
34-35	Change	"the claimant own the property on the March 2003" changed to "the Class 7A Claimant...on the March 2003"
36-37	Change	"property on the March...owned the property on" changed to "property on the March...owned the property on"
38-39	Change	"property on the March 2003 Bar Date?" changed to "property on the March 2003 Bar Date."
40	Deletion	(B) Provide an estimate...in the building.
41-42	Insertion	(D) Whether the Class 7A...repair or renovations.
43-44	Insertion	(E) Whether any other...repair or renovations.
45-46	Insertion	(F) When the Class 7A...in the property.
47-48	Insertion	(G) If the Class 7A...was/were installed.
49-50	Insertion	(H) Copies of all...Grace's further request.
51-52	Insertion	(I) When the Class 7A...Grace's further request.
53-54	Insertion	(J) When the Class 7A...made contained asbestos.
55-56	Insertion	(K) Whether the Class 7A...Grace's further request.
57-58	Insertion	(L) If the Class 7A...effort and, if so, when.
59-60	Insertion	(M) Whether any...is making the claim.
61-62	Insertion	(N) Whether any...is making this claim?
63-64	Insertion	(1) If an...and the date filed.
65-66	Insertion	(2) If an...the claim was submitted.
67	Change	"When" changed to "(C) When"
68	Change	"When did the" changed to "When the"
69-70	Change	"the claimant first" changed to "the Class 7A Claimant first"
71	Insertion	first learned
72-73	Change	"all newspapers and magazines to" changed to "(D) IdentifyA list of all...and magazines to"
74-75	Change	"newspapers and magazines...claimant has

		subscribed." changed to "newspapers and magazines...Claimant has subscribed."
76	Deletion	(E) Has the claimant ever...claims? If so, when?
77-78	Change	"dollar amount of the" changed to "(F) What is theThe dollar amount of the"
79-80	Change	"dollar amount of the claimant" changed to "dollar amount of the Class 7A Claimant"
81	Insertion	s claim.
82-83	Change	"2. The proof of claim...shall be maintained by a" changed to "2. The POC forms shall be maintained by a"
84	Change	"maintained by a claims...be promptly provided to" changed to "maintained by a claims...be promptly provided to"
85	Change	"and shall be promptly...to Reorganized Grace." changed to "and shall be promptly provided to Grace."
86-87	Insertion	3. Filing a POC shall...II.C of this PD CMO.
88	Change	"Class action claims shall not be" changed to "3. Class action claims shall not be"
89	Insertion	action claims shall not...in the pending appeals.
90	Change	"B. Discharge and Authority:" changed to "B. Discharge and...Proceed in Litigation:"
91-92	Change	"1. Within 60 days of receipt of" changed to "1. Within 45 days of receipt of"
93-94	Change	"days of receipt of a...request any additional" changed to "days of receipt of the...request any additional"
95-96	Change	"believes is necessary to...to file the claim." changed to "believes is necessary to...as set forth herein."
97-98	Change	"2. Within 60 days of receiving such request(s)" changed to "2. Within 45 days of receiving such request(s)"
99	Change	"receiving such request(s) from Reorganized Grace," changed to "receiving such request(s) from Grace,"
100-101	Change	"Grace, the claimants shall provide to" changed to "Grace, a Class 7A Claimant shall provide to"
102	Change	"shall provide to...requested information" changed to "shall provide to Grace the requested information"

103	Change	"Grace the requested information." changed to "Grace the requested...from discovery."
104-105	Change	"3. Within 120 days" changed to "3. Not later than 45 days"
106-107	Change	"days of receipt of such information from" changed to "days after receipt of such information from"
108-109	Change	"receipt of such...in the Bankruptcy Court" changed to "receipt of such...in the Bankruptcy Court"
110	Deletion	shall file in the...authority. The motion
111	Moved from	shall be heard and...appropriate governing
112-113	Change	"Bankruptcy Court rules and procedures." changed to "a motion (an "Asbestos PD...the March 2003 Bar Date."
114	Deletion	C. Pre-Trial Litigation: ...of Civil Procedure.
115	Deletion	1. Within 30 days of the...of claim as an exhibit.
116	Deletion	2. Within 30 days,...a responsive pleading.
117	Deletion	3. The Bankruptcy Court...and Daubert proceedings.
118-119	Change	"4. At the conclusion of...have been concluded." changed to "4. Should Grace choose to...Motion, that Motion"
120	Moved to	shall be heard and...appropriate governing
121	Insertion	federal laws, rules and...the Asbestos PD Trust.
122	Deletion	D. Settlement and ADR:
123	Deletion	1. Nothing in this Case...discussions at any time.
124	Deletion	2. Following the...shall be six months.
125	Deletion	3. Reorganized Grace and...settlement or ADR.
126	Deletion	E. Trial:
127-128	Insertion	5. Neither Grace nor the...as a counter-claim.
129-130	Insertion	6. In the event that the...Asbestos PD Claim.
131-132	Insertion	C. Litigation of a Class...Claim Discharge Motion:
133-134	Change	"1. For claims that are...in the District Court." changed to "1. In the event: (i)...respect to such claim."
135-136	Change	"2. All appropriate...Rules of Civil Procedure" changed to "2. For the avoidance of...Rules of Civil Procedure"
137	Change	"Federal Rules of Civil Procedure shall apply" changed to "Federal Rules of Civil...court rules"

		shall apply"
138	Insertion	shall apply.
139-140	Insertion	3. To the extent set...of such defense.
141-142	Change	". " changed to "4. The Asbestos PD Trust...such Asbestos PD Claim."

Statistics:	
	Count
Insertions	89
Deletions	51
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	142